

Forest Service, USDA

§ 211.4

(A) Jurisdiction of and condition of title to lands administered as part of the National Forest System.

(B) All encumbrances on National Forest System lands.

(C) All partial interests administered by the Forest Service on other lands.

(D) All use restrictions, withdrawals, and special designated areas on National Forest System lands.

(E) The acreage of National Forest System lands, including riparian lands.

(ii) A master Land Status File, from which the agency data for the Atlas is derived and which includes the following:

(A) Discrete title files of each land-ownership adjustment.

(B) The original authorizing documents establishing or adjusting National Forest System lands and interests therein.

(C) Withdrawals, use restrictions, and special designated areas on National Forest System lands.

(D) Other information as deemed necessary.

(iii) Such reporting systems as are needed to provide title or status reports.

(2) *Display of Information.* Information in the system may be collected and maintained in narrative, graphic, tabular, or other form and may be entered into and maintained in automated systems as well as produced in paper form in accordance with such administrative direction as the Chief of the Forest Service or Regional Foresters may establish.

(b) *Availability.* A Land Status Atlas shall be maintained at each National Forest administrative unit or subunit, such as Ranger Districts or National Recreation Area offices. Each Regional Office shall maintain copies of the Atlas for all National Forests within that Region. Related land title and realty records for each National Forest System unit shall be maintained at the administrative headquarters of that unit. The Land Status Atlas and such title and realty records as are held at an administrative unit shall be available for public inspection.

[56 FR 29181, June 26, 1991, as amended at 59 FR 2987, Jan. 20, 1994]

PART 211—ADMINISTRATION

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AUTHORITY: 16 U.S.C. 551, 472.

Subpart A—Cooperation With Private and State Agencies

§§ 211.1–211.2 [Reserved]

§ 211.3 Cooperation with State officers.

All forest officers will cooperate with State officials, insofar as practicable, to enforce State fire, game, and health laws. They are authorized to accept appointments, without compensation, as deputy State fire wardens, game wardens, and/or health officers whenever in the judgment of the Chief of the Forest Service the performance of the duties required by these offices will not interfere with their duties as Federal forest officers.

[1 FR 1261, Aug. 15, 1936]

§ 211.4 Cooperation for fire prevention and control.

The Forest Service shall, whenever possible, and is hereby authorized to enter into such agreements with private owners of timber, with railroads, and with other industrial concerns operating in or near the national forests as will result in mutual benefit in the prevention and suppression of forest fires: *Provided*, That the service required of each party by such agreements shall be in proportion to the benefits conferred.

[1 FR 1261, Aug. 15, 1936]

§211.5 Emergency fire suppression assistance.

(a) *Definitions.* For the purpose of this subpart these definitions apply:

(1) Prescribed fire means a fire burning under a set of specified conditions which will accomplish certain planned resource management objectives.

(2) Escaped prescribed fire means a prescribed fire which has either exceeded the prescription or has rekindled after it has been declared to be out.

(b) In the absence of a written reciprocal agreement with any fire organization or in situations outside the scope of an agreement, the Forest Service is authorized to render emergency assistance in suppressing fires and in preserving life and property from the threat of fire within the vicinity of Forest Service fire protection facilities under the following conditions:

(1) If a prescribed fire initiated on lands administered by the Forest Service escapes onto lands not administered by the Forest Service, the Forest Service may commit personnel, materials, and equipment without reimbursement or consideration of the fire's continuing threat to National Forest System lands or resources.

(2) When requested, the Forest Service may commit personnel, materials, and equipment on a reimbursable basis on lands not administered by the Forest Service without regard to the fire's threat to National Forest System lands or resources.

[48 FR 44537, Sept. 29, 1983]

Subpart B—Appeal of Decisions Concerning the National Forest System

§211.16 Appeal of resource recovery and rehabilitation decisions resulting from natural catastrophes.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions arising from recovery and rehabilitation efforts on National Forest System lands and resources damaged in natural catastrophes.

(b) *Matters subject to appeal.* The procedures established in this section apply only to initial written decisions concerning resource removal, recovery,

and rehabilitation activities resulting from natural catastrophes, such as forest fires, insect and disease epidemics, floods, winds, and earthquakes, that result from documentation required by the National Environmental Policy Act and its implementing regulations, policies, and procedures. Notice of the decisions appealable under this section and made after the effective date of this regulation shall be published in a local newspaper of general circulation immediately following the documentation referenced above. Subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts, are not appealable under this section or 36 CFR 211.18.

(c) *Who may appeal.* The process set forth in this section is available to any individual or organization wishing to appeal a decision arising from resource removal, recovery, and rehabilitation activities resulting from natural catastrophe.

(d) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(e) *Levels of appeal.* One level of administrative appeal is available.

(1) Appeals of decisions subject to the procedures of this section made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions subject to the procedures of this section made by a Forest Supervisor shall be filed with the Regional Forester.

(f) *Filing procedures.* (1) To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (i) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision.

(2) All notices of appeal must be filed within 30 days of publication of the notice of decision.

(g) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(h) *Content of notice of appeal.* Parties appealing a decision under this section must include the following information in the written notice of appeal:

(1) The specific activity being appealed;

(2) The date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision; and

(5) The relief desired.

(i) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the activity; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the stay decision shall be sent to the appellant and the Forest Officer who made the initial decision.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(j) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice

of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest Officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is available for public inspection.

(k) *Requests for additional information.* At any time during the appeal, the Reviewing Officer may request additional information from an appellant, the Forest Officer making the initial decision, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest Officer making the initial decision, appellants, or affected parties.

(l) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to anyone submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation.

(m) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (f) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (h) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision withdraws that decision.

(2) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(3) A Reviewing Officer shall give written notice of a dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

(n) *Continuance.* Provisions of 36 CFR 211.18 will remain in effect for appeals of decisions concerning activities that result from natural catastrophes filed prior to May 13, 1988.

(o) *Applicability and effective date.* The procedures of this section shall not apply to any appeal received after February 22, 1989.

[53 FR 17032, May 13, 1988, as amended at 54 FR 3357, Jan. 23, 1989]

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions to reoffer sales of timber that were returned to the Government under the provisions of the Federal Timber Contract Modification Payment Act of 1984 (16 U.S.C. 618) or that were defaulted by the purchaser.

(b) *Matters subject to appeal.* The procedures established in this section apply only to decisions to reoffer timber sales resulting from returned or de-

faulted timber sale contracts. Implementing decisions, such as advertising and/or awarding a reoffered sale, made subsequent to the initial decision to reoffer a returned or defaulted sale are not appealable under this section or 36 CFR 211.18.

(c) *Notice requirements.* (1) Notice of decisions appealable under this section and made after April 22, 1988, shall be published in a local newspaper of general circulation and also shall be provided in writing to parties to written instruments issued by the Forest Service who are known to be affected by the decision, as well as to any other interested persons or organizations who have requested notification of the specific decision.

(2) If the sale that is the subject of an appeal has been bid upon or awarded, the Reviewing Officer shall immediately notify the apparent high bidder or sale awardee of the appeal and the opportunity to comment as provided for in paragraph (f) of this section.

(d) *Who may appeal.* The process set forth in this section is available to:

(1) Any individual or organization who, following publication of the interim rule at 36 CFR 211.17 on January 28, 1988, submitted a timely Notice of Appeal on a decision to reoffer a sale of returned or defaulted timber.

(2) Any other individual or organization wishing to appeal a decision made prior to January 28, 1988, to reoffer a sale of returned or defaulted timber.

(3) Except as provided in paragraph (e) of this section, any individual or organization may appeal a decision made after January 28, 1988, to reoffer timber resulting from returned or defaulted timber sales.

(e) *Who may not appeal.* The process set forth in this section is not available to the defaulting purchaser of the original timber sale that is being or has been reoffered.

(f) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(g) *Levels of appeal.* For decisions to reoffer timber sales made after October 30, 1986, one level of administrative appeal is available. For decisions to

reoffer timber sales made prior to October 30, 1986, two levels of administrative appeal are available; the second level being to the next higher administrative level.

(1) Appeals of decisions to reoffer timber sales made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions to reoffer timber sales made by a Forest Supervisor shall be filed with the Regional Forester.

(h) *Filing procedures.* To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (j) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision to reoffer.

(1) For appeals filed pursuant to paragraph (d)(1) of this section, the notice of appeal must have been submitted by February 29, 1988.

(2) All notices of appeal pursuant to paragraph (d)(2) of this section must be submitted by May 23, 1988.

(3) All notices of appeal pursuant to paragraph (d)(3) of this section must be filed within 30 days of publication of the notice of decision, or from the date of the written decision for those parties pursuant to paragraph (c)(1) of this section entitled to receive written decision.

(i) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(j) *Content of notice of appeal.* Parties appealing a decision to reoffer a sale must include the following information in the written notice of appeal:

- (1) The timber sale being appealed;
- (2) Either the decision date or the date notice of the decision was published;
- (3) The Forest Officer who made the decision;
- (4) How the appellant is affected by the decision;
- (5) The relief desired; and

(6) A description of environmentally significant modifications or changed circumstances which are alleged to have occurred between when the initial timber sale was offered and sold and the date of the appeal on the decision to reoffer the sale.

(k) *Second level appeals.* For appeals to the second level filed pursuant to paragraph (g) of this section, a notice of appeal must be filed with the next higher administrative level within 15 days from the date of the first level Reviewing Officer's appeal decision. If the first level Reviewing Officer is the Forest Supervisor, the appeal is to the Regional Forester. If the first level Reviewing Officer is the Regional Forester, the appeal is to the Chief. The notice need only include the documents submitted at the previous level, the first level decision letter, and a statement addressing why the appellant believes the Reviewing Officer's decision is erroneous. A copy of that statement must be provided to the first level Reviewing Officer also. The first level Reviewing Officer may provide a response to the notice of appeal to the second level Reviewing Officer; and must send a copy to the appellant. The review will be based on the existing record from the first level appeal, the second level notice of appeal, and any response by the first level Reviewing Officer. A decision shall be issued within 45 days after receiving the notice of appeal.

(l) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision to reoffer the timber sale in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

- (A) Harmful site-specific impacts or effects on resources in the area affected by the reoffered timber sale; and
- (B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the decision shall be sent to the appellant and the Forest Officer who made the initial decision to reoffer.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(m) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision to reoffer a sale shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision to reoffer, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is open to public inspection.

(n) *Requests for additional information.* At any time during the review, the Reviewing Officer may request additional information from an appellant, the

Forest officer making the initial decision to reoffer, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest officer making the initial decision to reoffer, appellants, or those receiving notice pursuant to paragraph (c) of this section, as needed to clarify information submitted or to seek resolution of the issues in question.

(o) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to any person submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation, except for appeals to the second level filed pursuant to paragraph (g) of this section.

(p) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (h) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (j) or (k) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision to reoffer a sale withdraws that decision.

(2) An appeal may be dismissed in whole or in part if an appellant challenges a Decision Notice or Record of Decision without referring to (i) changed circumstances or (ii) environmentally significant modifications which are alleged to have occurred after the initial timber sale was offered

and the decision made to sell the timber.

(3) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(4) A Reviewing Officer shall give written notice of dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

(q) Applicability and effective date. The procedures of this section shall not apply to any decision signed on or after September 13, 1991.

[53 FR 13265, Apr. 22, 1988; 53 FR 40730, Oct. 18, 1988, as amended at 56 FR 46550, Sept. 13, 1991]

§ 211.18 Appeal of decisions of forest officers.

(a) *Matters subject to appeal.* (1) Decisions of Forest Officers concerning the National Forest System and not excluded in paragraph (b) of this section are subject to appeal.

(2) Written notice of a decision shall be provided to the party or parties to a written instrument issued by the Forest Service and affected by the decision, and to any other interested person who has requested in writing notification of the specific decision.

(3) For other persons, notification of a decision may be provided through publication in a newspaper of general circulation.

(b) *Matters excluded from appeal under this section.* (1) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR part 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions in which the jurisdiction of another Government agency, the Comptroller General, or a court supersedes that of the Department of Agriculture, or decisions to provide advisory, non-binding recommendations to other agencies which have the final authority to implement the recommendations in question.

(4) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 228.14 (Minerals); 36 CFR 292.15(l) (Appeals, Sawtooth National Recreation Area, Private Lands); 36

CFR 223.117 (Administration of Cooperative or Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Relocation Payment or Amount); and 4 CFR part 21 (Bid Protests).

(5) Decisions pursuant to OMB Circular A-76.

(6) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(7) Decisions covered by the Contract Disputes Act.

(8) Decisions involving personnel matters.

(9) Decisions where relief sought is reformation of a contract or award of monetary damages.

(10) Procedural decisions made under this subpart, except those involving stays and dismissals.

(11) Preliminary planning process decisions made prior to completion of final plans and guides prepared pursuant to 36 CFR part 219 and 40 CFR parts 1500-1508.

(12) Decisions resulting from review of previous decisions to terminate a recreation residence permit.

(13) Decisions to reoffer timber from returned or defaulted timber sales appealable under § 211.17.

(14) Subsequent actions to advertise and/or award a reoffered sale.

(15) Initial decisions arising from recovery and rehabilitation activities resulting from natural catastrophes appealable under § 211.16 of this subpart and subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts made pursuant to such decisions.

(c) *Filing procedures and timeliness.* (1) A notice of appeal of any initial decision must be filed with the Forest Officer who made the decision, known as the Deciding Officer, within 45 days of the date of the decision. A statement of reasons to support the appeal, and any request for an oral presentation must also be filed within the 45-day period for filing a notice of appeal unless an extension is granted.

(2) A notice of appeal at the second level must be filed within 30 days of

written decision. A statement of reasons to support the appeal and any request for an oral presentation must accompany any notice of appeal at the second level.

(3) The period to appeal a decision made according to 40 CFR 1505.2 shall not end prior to the 30-day period provided for in 40 CFR 1506.10.

(4) When determining time of filing, Reviewing Officers shall give precedence to United States Postal Service (USPS) postmarks over other evidence of timely filing. Filing is defined as either mailing or delivery of the appropriate documents. If documents are delivered by means other than the USPS, date of receipt determines time of filing. If the date of mailing cannot be determined from a legible USPS postmark, the Reviewing Officer may accept other evidence of timely filing. Weekends or Federal holidays are included in computing the time allowed for filing, but when the filing time would expire on a weekend or holiday, the filing time is extended to the end of the next business day.

(5) Questions on timeliness will be decided by the Reviewing Officer.

(6) Decisions may be implemented unless a stay is granted.

(d) *Extensions.* (1) Time for filing notice of appeal may not be extended.

(2) Written requests for extensions to request an oral presentation, to prepare a statement of reasons, to provide comments on the responsive statement, and to submit comments following an oral presentation may be granted by the Reviewing Officer for good cause shown by the Applicant. A decision will be made within 10 days of receipt and written notification will be provided.

(e) *Notice of appeal content.* The notice must specifically identify the decision being appealed, the decision date, the Forest Officer who made the decision, how the Appellant is affected by the decision, and the relief desired.

(f) *Levels of appeal.* (1) The available levels of appeal are in sequence according to the National Forest System line officer relationship. A decision made within delegated authority by any officer who serves as staff to a line officer listed below is considered a decision made by the line officer. A procedural

decision cannot be appealed to a level higher than that available for the initial substantive decision from which the procedural matter arises.

(i) Initial decisions of a District Ranger may be appealed to the Forest Supervisor, with second level appeal to the Regional Forester.

(ii) Initial decisions of a Forest Supervisor may be appealed to the Regional Forester, with second level appeal to the Chief.

(iii) Initial decisions of a Regional Forester may be appealed to the Chief.

(iv) Initial decisions of the Chief may be appealed to the Secretary of Agriculture.

(2) Appeal decisions made by the Chief will be sent to the Secretary within one business day. The Secretary may exercise discretion to review such decisions, but will accept a notice of appeal or petition only for initial decisions made by the Chief.

(3) A notice of appeal of any initial decision made by the Chief shall, within 5 days of its receipt by the Chief, be sent along with the relevant decision to the Secretary for review at the Secretary's discretion. The appeal is deemed denied if the Secretary takes no action within 10 days of receiving the appeal.

(4) Appeal decisions made by the Chief may be implemented if the Secretary, within 10 days of receipt, does not exercise discretionary review.

(5) If the Secretary elects to review a decision made by the Chief, the review may be conducted based on the record before the Chief, or under other procedures the Secretary may deem appropriate, including the preparation of a responsive statement.

(6) Decisions at the final level of review constitute the final administrative determination of the Department of Agriculture.

(g) *Responsive statement.* At each level of appeal except for decisions of the Chief, the Deciding Officer will, within 30 days of receiving a statement of reasons, prepare a responsive statement and send it to the parties to the appeal. The responsive statement will respond to Appellant's reasons, and by specific reference may incorporate documents submitted by parties to the appeal. Appellants may, within 20 days from the

mailing date of the responsive statement, provide a concise reply. Upon receipt of such reply, or at the end of the 20-day period, whichever comes first, the appeal record will be sent to the Reviewing Officer.

(h) *Stay of decision pending appeal.* (1) An appellant or intervenor may request a stay of decision at any time while an appeal is pending.

(2) When a request to intervene is accompanied by a stay request, the Reviewing Officer shall first decide whether to grant intervention. The 21-day period for ruling on the stay request begins on the date intervention is granted. The Reviewing Officer will not rule on the stay request if intervention is denied.

(3) In making a request for stay of decision, an appellant or intervenor must:

(i) File the request for stay and accompanying documents with the Reviewing Officer and simultaneously provide a copy to the Deciding Officer.

(ii) Enclose a copy of the Notice of Appeal or request for intervention, unless already submitted and acknowledged.

(iii) As part of the request, provide a written description of the specific project(s), activity(ies), or other action(s) to be stopped. The request must state the specific reason(s) why the stay should be granted in detail sufficient to permit the Reviewing Officer to evaluate and rule upon the stay request. Requesters' description shall include:

(A) Specific effect(s) upon the requester in site-specific terms of the project(s), activity(ies), or other action(s) to be stopped; (B) impacts or affects to resources in the area affected by the project(s), activity(ies), or action(s) to be stopped; and (C) how the effects in paragraphs (h)(3)(iii) (A) and (B) of this section would prevent a meaningful appeal on the merits while the appeal decision is pending.

(4) The Reviewing Officer may rule on a stay request or petition to change or lift a stay at any time, but, must rule no later than 21 calendar days from receipt.

(i) If a stay is granted, the stay shall specify: Specific activities to be stopped; duration of the stay; and rea-

sons for granting the stay. A stay shall remain in effect for 10 days after a decision on the merits, unless a different period is specified in the stay decision document, or a Reviewing Officer changes a stay decision pursuant to paragraph (h)(7) of this section.

(ii) If a stay is denied, in whole or in part, the decision document shall specify the reasons for the denial and any subsequent appeal rights.

(5) In deciding a stay request, a Reviewing Officer shall consider the following:

(i) Information provided by the requester pursuant to paragraph (h)(3)(iii) of this section including the validity of any claims of injury to the requester or the public interest.

(ii) The effect a stay decision would have on the preservation of a meaningful appeal on the merits.

(iii) Any other factors the Reviewing Officer may consider relevant.

(6) Deciding Officers may provide Reviewing Officers with a response to stay requests. A copy of any response provided shall be sent to all parties to the appeal.

(7) A Reviewing Officer may change a stay decision, according to any terms established in the stay decision itself, or at any time during pendency of an appeal that circumstances support a change of the stay.

(i) A Reviewing Officer may change a stay decision upon petition by any party to the appeal (including the Deciding Officer) at any time that circumstances support such action. A decision not to change a stay decision is not appealable.

(ii) In making any change to a stay decision, the Reviewing Officer must consider the criteria outlined in paragraph (h)(5) of this section.

(iii) Petitions to change an existing stay decision must contain an explanation of how circumstances have changed.

(8) Levels of appeal for any decision on a stay request or change thereof are those specified in paragraphs (f), (l), and (o) of this section. Appellants may choose to file a procedural appeal of a stay decision pursuant to paragraph (o)(4) of this section or to request a change in a stay decision pursuant to paragraph (h)(7) of this section, but

may not elect to pursue both options. In appeals with multiple parties (appellants and/or intervenors), once any party invokes a procedural appeal of a stay decision or a request to change a stay decision, whichever occurs first, all other parties shall be bound by that action and cannot then pursue the alternate course of action.

(9) The provisions of paragraphs (h)(1) through (h)(8) of this section apply to all appeals pending on July 20, 1987.

(i) *Dismissal.* (1) An Appellant may withdraw an appeal at any time by notifying the Deciding Officer and other parties to the appeal in writing.

(2) A Reviewing Officer may dismiss an appeal when:

(i) Appellant has failed to submit a timely statement of reasons and the notice of appeal provides an insufficient basis upon which to base a decision.

(ii) Relief desired by the Appellant cannot be granted under existing facts or laws.

(3) Dismissals are appealable, if a level is available as set forth in paragraph (f) of this section.

(j) *Scope of appeal.* Throughout all levels of appeal, an Appellant and any Intervenor shall be confined to the issues originally raised in the appeal. New information on the original issues may be introduced at any level.

(k) *Provision for comments.* Any person or organization may submit written comments for the record. Such comments will be considered as provided for in paragraph (p) of this section.

(l) *Intervenors.* (1) At the discretion of the Reviewing Officer, any person or organization having an immediate interest in the subject of an appeal may intervene by submitting written information at any level of the appeal process. Such intervention shall not act to elevate the appeal to levels higher than available to the original Appellant.

(2) In appeals involving Intervenors, the Reviewing Officer may prescribe special procedures to expedite the process. The parties to the appeal will be notified of these procedures.

(3) Appellants and Intervenors must concurrently furnish copies of all submissions to each other; otherwise, such submissions may be removed from the

appeal record. At the discretion of the Reviewing Officer, Appellants may be given time to review and comment on initial submissions by intervenors and vice versa.

(4) Appellants or Intervenors appealing a decision to a higher level must furnish copies of their notice of appeal to all other named parties to the appeal.

(m) *Oral presentation.* Within the appeal time limits established herein, parties to an appeal may ask to give an oral presentation. The Reviewing Officer will respond in writing to the request no later than 10 days after receiving the appeal record. If the request is granted, the Reviewing Officer will advise the parties of who will hear the presentation, and of the place, time, and date. Participants may provide documentary material at the presentation and, within 10 days after the presentation, may also submit a brief summary of their remarks.

(n) *Consolidation of appeals.* Multiple appeals of the same decision, or of similar decisions involving common issues, facts, or law, may be consolidated by the Reviewing Officer who may then issue one appeal decision. At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(o) *Procedural matters.* (1) Decisions on stays and dismissals are the only appealable procedural decisions. Such appeals must be filed with the Deciding Officer within 30 days of the procedural decision. A statement of the Appellant's reasons must be included.

(2) Within 10 days of receipt, the Deciding Officer shall send appeals on stays and dismissals and a response to the Reviewing Officer for decision.

(3) Decisions on procedural matters will be made by the Reviewing Officer within 10 days of receipt and all parties will be notified of the decision in writing.

(4) Appeal of decisions on procedural matters cannot exceed the highest level available for the initial substantive decision appealed.

(p) *Appeal record.* The record consists of a distinct set of identifiable documents directly concerning the appeal, including, but not limited to, notices of

appeal, comments, statements of reasons, responsive statements, procedural determinations, correspondence, summaries of oral presentations and related documents, appeal decisions, and other information the Reviewing Officer may consider necessary to reach a decision. For a period not to exceed 10 days following the date the record is received by the Reviewing Officer or from the date of the oral presentation, whichever is the later date, parties may submit additional information to the Reviewing Officer for the record. They must concurrently send copies to all other parties who may within 20 days of the date they receive such material, provide a concise response to the Reviewing Officer. Upon receipt of such response, the record will be closed. The record is open for public inspection.

(q) *Request for additional information or remand for further action.* If the appeal record is considered inadequate to affirm or reverse a decision, the Reviewing Officer may suspend the appeal process and request additional information, or remand the case with instructions for further action.

(r) *Appeal decision.* An appeal decision will be based only on the record and should be made within 30 days of the date the record is closed. The Appellant will be notified if more time is needed.

(s) *Continuance of appeals.* Provisions of 36 CFR 211.19 will remain in effect for appeals initially filed between June 28, 1977, and the effective date of 36 CFR 211.18. The procedures of this section shall not apply to any decision of a forest officer made after February 21, 1989.

[48 FR 13425, Mar. 31, 1983, as amended at 49 FR 26591, June 28, 1984; 51 FR 19831, June 3, 1986; 51 FR 41785, Nov. 19, 1986; 52 FR 23178, June 18, 1987; 52 FR 27547, July 22, 1987; 53 FR 2493, Jan. 28, 1988; 53 FR 17033, May 13, 1988; 54 FR 3357, Jan. 23, 1989; 54 FR 6892, Feb. 15, 1989]

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

Sec.

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AUTHORITY: 16 U.S.C. 551, 23 U.S.C. 205.

§ 212.1 Definitions.

For the purpose of this part the following terms, respectively, shall mean:

(a) *Chief.* The Chief, Forest Service, Department of Agriculture.

(b) *Regional forester.* A regional forester of the Forest Service.

(c) *Forest development transportation plan.* The plan for the system of access roads, trails, and airfields needed for the protection, administration, and utilization of the National Forests and other lands administered by the Forest Service, or the development and use of resources upon which communities within or adjacent to the National Forests are dependent.

(d) *Forest development transportation facility.* An access road, trail, or airfield wholly or partly within or adjacent to and serving a National Forest and other lands administered by the Forest Service which has been included in the forest development transportation plan.

(e) *Forest development road and trail funds.* Funds authorized or appropriated for the purpose of carrying out the provisions of section 205 of the Act of August 27, 1958 (72 Stat. 907), as amended; 23 U.S.C. 205.

(f) *Road and trail 10 percent funds.* Funds available from the permanent appropriation "Roads and Trails for States" under the Act of March 4, 1913 (37 Stat. 843), as amended; 16 U.S.C. 501.

(g) *Federal airport funds.* Discretionary funds available for airfields in